

1 A. Eric Bjorgum (State Bar No. 198392)
2 Marc A. Karish (State Bar No. 205440)
3 KARISH & BJORGUM, PC
4 510 West 6th St., Suite 308
5 Los Angeles, CA 90014
6 Telephone: (213) 785-8070
7 Facsimile: (213) 995-5010
8 E-Mail: eric.bjorgum@kb-ip.com

9 Attorneys for Plaintiff
10 ALAN NIVEN

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 ALAN NIVEN,

14 Plaintiff,

15 v.

16 RICHARD BREWSTER; JOHN
17 BREWSTER; NAYCODA PTY LTD.;
18 FLASHPOINT MUSIC PTY LTD;
19 DOES 1 – 10.

20 Defendants.

) Case No. CV 10-04376-GAF (PJWx)

) **RESPONSE TO ORDER TO SHOW**
) **CAUSE DATED ON MAY 31, 2011**

) **Date: June 20, 2011**

) **Time: N/A**

) **Judge: Hon. Gary A. Feess**
)

1 COMES NOW, PLAINTIFF ALAN NIVEN (“Niven” or “Plaintiff”) with
2 this response to the Court’s Order dated May 31, 2011 (D.N. 27) as follows:

3 **I. The Proofs Of Service**

4 Plaintiff has served Richard Brewster, John Brewster and Flashpoint Music
5 Pty Ltd. In accordance with the Federal Rules of Civil Procedure regarding
6 international service, Plaintiff first sent full sets of the initial documents via mail
7 with return receipts requested. Plaintiff received no response, so Plaintiff asked for
8 the assistance of the Clerk of Court because the Clerk can serve documents to a
9 post office box, and Plaintiff had post office box numbers as well as physical
10 addresses. The Clerk received no response.

11 Finally, in order to effectuate personal service, Plaintiff engaged a process
12 server in Australia to attend a Brewster Brothers show. The Brewster Brothers is
13 an acoustic duo comprised of Defendants Rick and John Brewster. On May 5,
14 2011, before the show, the process server identified Rick Brewster and handed him
15 two copies of the Second Amended Complaint and related documents. On May 17,
16 2011, the same agency served Flashpoint Music Pty Ltd. All three proofs of
17 service have been filed with the Court. (See Dkt. Nos. 26, 28.)

18 **II. Defaults**

19 Plaintiffs have not taken the defaults of any of the Australian parties because
20 they are entitled to 90 days to answer the SAC, per Fed.R.Civ.P. 4(d)(3). Plaintiff
21 will gladly take the defaults when the 90 days has expired.

22 This entire situation has been a game by the Australian defendants. They are
23 very well known musicians, and this case has received publicity. They knew the
24 documents were coming, so they would not sign for them. When Apple, Inc.
25 continued to sell Plaintiff’s songs after receiving notice of the infringement,
26 Plaintiff brought Apple into the case, in part in the expectation that Apple could
27 facilitate some dialog between the parties, given that iTunes has an extensive
28

Thus, Plaintiff has been awaiting a Rule 26 meeting to begin to take discovery. With just some basic information, Plaintiff will be in a position to move for summary judgment and bring this case to swift resolution.

Dated: June 20, 2011

By: _____ /s/
A. Eric Bjorgum
Attorneys for Plaintiff
ALAN NIVEN